

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAYLEE SMITH, individually, and JOHN
SMITH, individually and as Limited
Guardian Ad Litem for N.S., a minor,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 2:19-cv-00788

JOINT STIPULATION AND
ORDER EXTENDING PRETRIAL
DEADLINES

**Noted for Consideration on:
December 9, 2019**

JOINT STIPULATION

COMES NOW the Plaintiffs, by and through counsel, Thaddeus P. Martin, and the
Defendant, United States of America, by and through its counsel, Brian T. Moran, United
States Attorney for the Western District of Washington, and Heather C. Costanzo, Assistant
United States Attorney for said District, pursuant to Local Rule 10(g), and hereby jointly
stipulate and agree as follows:

The parties hereby jointly stipulate and agree to extend the pretrial deadlines as set forth in the Court's October 7, 2019 Order Setting Pretrial Schedule (Dkt. 25), as set forth below:

Deadline	Current Deadline	New Deadline
Plaintiffs' reports of expert witnesses under FRCP 26(a)(2) due	12/2/19	4/2/20
Defendant's reports of expert witnesses under FRCP 26(a)(2)	12/17/19	4/17/20
Rebuttal expert disclosure	1/6/20	5/6/20
All motions related to discovery filed	1/20/20	5/20/20
Discovery completion	2/11/20	6/11/20
All dispositive motions and motions to exclude expert testimony	3/13/20	7/13/20

The purpose for the extension is to extend all pre-trial deadlines, in order to allow sufficient time for discovery to take place in this Federal Tort Claims Act ("FTCA") case.

Plaintiffs filed the above-styled action on May 23, 2019 alleging that a Navy service member caused the vehicle collision at issue in this suit. Dkt. 1. The United States served its Answer on July 29, 2019. Dkt. 15. Per the Court's August 16, 2019 Order (Dkt. 20), the parties exchanged Initial Disclosures by September 20, 2019. Counsel engaged in a Rule 26(f) conference and submitted a Joint Status Report on September 26, 2019. Dkt. 23. Soon after, Plaintiffs and the United States served discovery requests on October 16, 2019 and October 17, 2019, respectively. However, both parties agreed to an extension until December 16, 2019 to serve responses, as Plaintiffs' counsel has been in trial and required additional time and the United States needed additional time in order to communicate with GSA regarding the

1 government vehicle involved in the collision and to communicate with the Navy service
2 member, who is out at sea, regarding information requested by Plaintiffs.

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4 In an FTCA case such as this one, involving a motor vehicle collision in which a federal
5 employee was a driver, it typically takes at least 12 months from the filing of the Joint Status
6 Report, if not longer, for a case to be ready for trial. Pursuant to Federal Rule of Civil
7 Procedure 26(d), discovery cannot be exchanged prior to the parties' Rule 26(f) conference.
8 Prior to receiving discovery responses from a plaintiff, the United States is not in a position to
9 identify what possible expert witnesses it might need to retain. Further, in a case involving
10 personal injuries such as this, the United States' discovery requests seek a medical release
11 from the plaintiff so that the United States can obtain medical records. Once that release is
12 obtained, it typically takes on average about a month to two months at least, if not longer, to
13 obtain medical records from providers. The time it takes to obtain the records often depends
14 upon the provider, the speed with which it responds, as well as whether it has outsourced its
15 medical records. It also is subject to a plaintiff timely supplying a medical release. Further,
16 if a plaintiff does not agree to provide the release, then the records must be obtained via
17 subpoena, thus further adding to the timeline.

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19 Access to a plaintiff's medical records in an FTCA case is necessary to assess not only
20 the extent of any injuries, but also what type of expert witnesses may be necessary and for
21 those records to be provided to any expert witness for review and assessment. Further, an
22 expert witness may determine that an exam of a plaintiff or additional discovery is necessary
23 (this can also apply to a plaintiff's expert witnesses as well). In addition, the scheduling of
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1 depositions, either of the plaintiffs, the driver of the government vehicle, or any other drivers
2 or witnesses present at the scene of the accident, may need to take place, as well as depositions
3 of expert witnesses. Scheduling those depositions depends upon the availability of the
4 witnesses and counsel. Further, depending upon information provided in discovery or during
5 depositions, additional discovery requests or depositions could be needed. Finally, all of this
6 assumes there are no discovery disputes, which would further affect the time needed for
7 discovery. Moreover, this case involves two plaintiffs who are both alleging injuries and thus
8 involves the medical records and the alleged injuries of two individuals and twice the
9 necessary assessments and review.
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13 The current pretrial schedule requires that discovery be completed within four months
14 from the issuance of the Order Setting Pretrial Schedule, with expert disclosures due this
15 month, two months after the issuance of the Order. Dkt. 25. For the reasons set forth above,
16 this will be a difficult, if not impossible, feat. At this time, the United States has not yet
17 received discovery responses from Plaintiffs, including any medical releases, and thus does
18 not even yet have any medical records in order to assess further discovery and deposition
19 needs. In addition, the Navy service member that was the driver of the government vehicle
20 during the collision that is at issue in this case is currently at sea and the United States does
21 not know when she will return, as information regarding the ship's movements cannot be
22 provided to the U.S. Attorney's Office. Thus, the United States' ability to communicate with
23 its driver regarding the circumstances of the accident is hindered, which affects its ability to
24 fully prepare its case.
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1 The parties are cognizant of and committed to adhering to the Court's schedule and
2 moving this case to resolution quickly. However, as the case involves personal injuries,
3 medical records, and most likely expert witnesses, additional time for the pretrial schedule is
4 needed. Accordingly, the parties hereby stipulate and agree to extend the pretrial deadlines
5 set forth in the October 7, 2019 Order Setting Pretrial Schedule (Dkt. 25) as set forth above.
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1 **SO STIPULATED.**

2 Dated this 6th day of December, 2019

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4 BRIAN T. MORAN
5 United States Attorney

6 /s/ Heather C. Costanzo
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16 Attorney for Defendant United States

ORDER

IT IS SO ORDERED.

Dated this 9th day of December, 2019.



MICHELLE L. PETERSON
United States Magistrate Judge